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IN THE

Supreme Court of the United States

OCTOBER TERM 1946

No. 455

—o—

FRED J. MARTIN, Trustee (Objectant),
Petitioner,

—against—

EUGENE CAMPANARO, EDWARD GRIMM, JAMES MURPHY, JOHN WELLMAN, JACK CELLELLA, EDWARD THORN, DAVE BARTLEY, ANTHONY RAGOZZINO, JOHN MENCHEN, SAM NUSSO, JAMES URSO, LEON DOERR, FRANK BRUNO, EMIL ISOLA, JAMES RECLA, IRVING DRIESACKER, JOSEPH BRIENZA, THOMAS TOBIN, GEORGE FARINA, BERNARD COFFEY, GEORGE NADAR, DANIEL WEIR, SALVADORE CARELLI, BURNETT FULLER, JOHN ADAMI, ANGELO CASSANO, VINCENT CAMMARATA, CARMINE GIORDANO, PETER CACABRESE, WALTER REEVES, FRANCIS LOTZ, OTTO WOLPERT, LOUIS CAMPANARO, WALTER CVARNESKI, GEORGE MOGLEY and PETER WILCHA, (Claimants),
Respondents.

In the Matter of Suburban Bus Co., Inc.,
Bankrupt.

PETITION AND BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner Fred J. Martin, Trustee in bankruptcy of Suburban Bus Co., Inc., respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review a judgment and order of that Court (R. 119), entered on June 5, 1946, which reversed an order of the United States District Court for the Southern District of New York, entered January 21, 1946, and remanded the cause for further proceedings in accordance with the opin-

ion of said Circuit Court of Appeals. The District Court's said order (R. 100, 101) adopted the findings of fact and conclusions of law of the Referee in Bankruptcy, dated October 26, 1945, dismissed the petition to review filed by the claimants (respondents herein) and affirmed the order of said Referee in Bankruptcy dated October 26, 1945. The said Referee's findings of fact and conclusions of law (R. 84-89) and his order (R. 90, 91) sustained the objections filed by the trustee in bankruptcy (petitioner here) to the claims filed by said claimants (respondents) against the bankrupt estate of Suburban Bus Co., Inc., and directed that all of said claims be expunged and disallowed. Your petitioner's instant petition is accompanied by certified transcript of the record in the case including the proceedings in the said Circuit Court of Appeals. Your petitioner submits and annexes hereto his supporting brief.

Opinions Below

The opinion of the Circuit Court of Appeals is found at pages 110 to 118 inclusive of the Record. The opinion of the District Court is found at pages 98 and 99 of the Record. The opinion of the Referee in Bankruptcy is found at pages 75 to 83 inclusive of the Record.

Statement of Matter Involved

For convenience of reference, your petitioner will be hereinafter referred to as "Trustee," respondents as "Claimants," Suburban Bus Co., Inc., the bankrupt, as "Suburban," and the labor union to which Claimants belonged as "Amalgamated."

Claimants, 36 in number, filed against Suburban's estate in bankruptcy individual unliquidated claims. Each of said proofs of claim (R. 3, 4) states that Suburban is indebted to the claimant for an unliquidated sum of money

in the form of back pay owed for services rendered from May 24, 1944 to May 3, 1945; that no part of said debt has been paid; that on April 30, 1945 the Regional War Labor Board for the Second Region found that claimant was entitled to back pay of an unliquidated amount for services rendered after May 24, 1944; that said back wages are entitled to a certain priority under Section 64a(2) of the Bankruptcy Act.

The Trustee objected to each of said claims (R. 7-10), a hearing was held before the Referee in Bankruptcy on said objections and testimony was taken at said hearing (R. 11-68). The said Referee sustained the objections and expunged the claims in their entirety (R. 83, 89,91). The Claimants filed a petition to review said determination (R. 92-95) which was filed on behalf of each of them and in their names by their attorney. As already stated, the District Court affirmed the order of the Referee in Bankruptcy and dismissed said petition to review. Each of the Claimants appealed to the Circuit Court of Appeals from the order of the District Court (R. 102, 103) and filed a statement as to the points and errors to be relied upon by said Claimants on said appeal (R. 107). Said Circuit Court of Appeals thereafter reversed said District Court's order.

The facts are as follows:

Claimants were employed by Suburban as operators, mechanics or helpers on Suburban's bus lines operated in and around the City of Yonkers, State of New York. Since May 1937 a labor union, Amalgamated, was the exclusive bargaining representative for said employees under successive yearly written agreements, fixing wages and working conditions, entered into between Amalgamated and Suburban during the period from May 1937 to May 24, 1944. On April 19, 1944 Amalgamated notified Suburban in writing that it wished to confer with it for modification

and revisions of the collective agreement for the ensuing year. On April 21, 1944 Suburban consented thus to confer (R. 75, 85, 60, 61). The last written contract, signed in May 1943, provided that it was to remain in full force and effect from year to year unless either party at least 30 days prior to the expiration of said agreement in any year notified the other in writing of its desire for termination, changes or modifications, to be effective for the succeeding year or years (R. 59).

Several months went by without an agreement being reached between Amalgamated and Suburban as to modification or revision of the terms of the previous written contract, but during all this time Suburban continued to pay, and Claimants continued to accept without protest, the wages and working conditions provided for in such previous contract (R. 85, 86). On December 7, 1944 when negotiations between Amalgamated and Suburban had reached a stalemate, the New York State Mediation Board referred the dispute to the National War Labor Board, and on December 18, 1944, the United States Secretary of Labor officially certified the dispute to the National War Labor Board (R. 86). Suburban objected to the jurisdiction of said Board over the person of Suburban on December 27, 1944 by letter addressed to the United States Department of Labor, U. S. Conciliation Service (R. 37, 46). Formal hearings were held on January 16, 1945 (R. 86). The Board's hearing officer on February 13, 1945 recommended an increase of ten cents an hour for all operators and a reduction in the straight-time work day to 8½ hour period each day, with such adjustments being retroactive to May 24, 1944. Suburban objected to these recommendations on the merits (R. 86).

On March 22, 1945, an involuntary petition in bankruptcy was filed against Suburban and it was adjudicated a bank-

rupt. On April 10, 1945, Fred J. Martin was duly appointed its Trustee in Bankruptcy (R. 86).

On April 30, 1945, the Regional War Labor Board issued its "directive order" sustaining the recommended increase in the former wage scale and directing a regular nine-hour day, forty-eight hour week and time and one-half for overtime, all retroactive to May 24, 1944. No petition for review was made by the bankrupt and by the terms of the order and the procedural rules of the Board, the interim order became final (R. 86). The "directive order" provided that the terms and conditions of the "directive" should be incorporated in a signed agreement "reciting the intention of the parties to have their relations governed thereby, as ordered by" the Board (R. 71). When requested to do so, the Trustee refused to execute such an agreement, at the same time disputing the jurisdiction of said Board over the Trustee (R. 73, 74).

From May 24, 1944 to May 2, 1945 (the date when the Trustee sold Suburban's assets by order of the Bankruptcy Court) (R. 17), Claimants continued working for Suburban at the same scale of wages set forth in the previous written collective agreement signed in May, 1943, receiving and accepting said wages each and every week from Suburban. Suburban's bookkeeper testified that Claimants had been paid such wages in full compensation for their services through May 2, 1945 (R. 17, 21, 22). She also testified that these men were paid each week their salary either by cash or by check for the period from May 24, 1944 to May 2, 1945, mostly by check; when paid by cash the money was given to them in an envelope, on the flap of which envelope there was written down the amount paid, the rate of pay, and deductions for hospitalization, union dues, and social security, besides indicating the week for which the work was done; that the men accepted the cash given to them in

said envelopes each week (R. 26, 27); that the weekly payroll checks paid to these men had the same information written in to advise the men of what they were being paid (R. 27, 28). She stated that there was nothing on Suburban's books to show that any of these claimants have any money coming to them from Suburban (R. 28).

The local division president of Amalgamated (R. 47) testified that the only rate of wages ever agreed upon mutually between Suburban and Amalgamated representing the claimants was a wage scale of 60¢ an hour to 85¢ an hour for bus operators, dependent on length of service; that that was the scale of wages set forth in the agreement entered into in May, 1943 between Suburban and Amalgamated and that no agreement was entered into in writing thereafter (R. 59); that the rates of pay set forth in that last agreement were paid by Suburban to these claimants (R. 60). No agreement in writing was ever entered into between Suburban or the trustee and Amalgamated or any claimants changing or modifying in any way the terms of employment or wages set forth in the agreement with Amalgamated dated May, 1943 (R. 61). Although Amalgamated met with Suburban and requested certain wage increases, Suburban did not agree to the same and the men got the same wages as they did before (R. 62, 63); that . o agreement, oral or in writing, was ever made between Amalgamated and Suburban or the Trustee, as to any change in the scale of wage over and above the scale set forth in the agreement of May, 1943 (R. 64).

Mr. Zseltvay, the witness called by the claimants, testified that on the envelopes in which the claimants received their weekly pay from Suburban the flap was ruled off showing the number of hours they worked, the amount of pay per hour or rate of wage, the total pay along with the deduc-

tions for taxes, social security, etc., and that each of the claimants would sign these flaps (R. 66). Petitioner contends that this constituted a receipt for payment in full.

The Referee in Bankruptcy who heard the testimony, in his findings of fact and conclusions of law, affirmed by the District Court, found that Claimants during the period in question continued to work and accept without protest the rate of wages which they had previously received under the old contract (R. 87), and that commencing on May 24, 1944, an implied contract arose out of the conduct of the parties, and the rights and obligations of the parties thereunder are to be measured as provided in the old contract; that by continuing to work and accept their previous rate of wages without protest, Claimants cannot now claim a higher rate of wages; they were paid in full (R. 88).

The District Judge in his opinion said:

> "The conduct of the parties negatives a holding that the claimants continued working upon a *quantum meruit* basis. A promise to make additional compensation cannot be inferred where the very claim is contested at all times by the one to be charged. The mere fact that an employee demands an increase in wages which is refused by his employer does not *ipso facto* give rise to a relationship in which the employee is to receive the reasonable value of his services. More is needed. c. f. *Meislahn v. Irving Nat. Bank*, 62 App. Div. 231, aff'd 172 N. Y. 631." (R. 99.)

Statement of Jurisdiction

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (28 U. S. C. A. section 347a).

It is submitted that the following authorities sustain this Court's jurisdiction: Erie R. Co. v. Tompkins, 304 U. S. 64, 78; Ruhlin v. N. Y. Life Insurance Co., 304 U. S. 202, 205; Gay v. Ruff, 292 U. S. 25, 30.

Questions Presented

The following questions of law are presented which petitioner believes are important enough to warrant a review by this Court:

1. Whether the Circuit Court of Appeals has decided this case in a way probably in conflict with the applicable law and decisions of New York State in that on the facts in the record no contract implied in fact or law to pay claimants on a *quantum meruit* basis can be spelled out?

2. Will not the decision of the Circuit Court of Appeals have the effect of creating unrest and suspicion in future labor-management relations in reference to bargaining negotiations as well as to lead to much litigation and possible strikes and lockouts in a field where the parties should not deal at arms length with each other?

3. Did not the Bankruptcy Act require these Claimants to obtain leave to appeal to the Circuit Court of Appeals?

Reasons for Granting the Writ

1. The Circuit Court of Appeals decided this case on the basis of an alleged contract "implied in fact" to pay claimants the reasonable value of their services. Inasmuch as the legal rights of the parties herein are based on contract law, and their dealings having taken place within the State of New York, then the common law of that State should have been applied (Erie R. Co. v. Tompkins, 304 U. S. 64, 78).

2. Under the decisions in the State of New York cited in the annexed brief the bankrupt estate and your petitioner should not be held liable to claimants on any *quantum meruit* basis whether on the theory of a contract "implied in fact" or in quasi-contract. The holding of the Circuit Court is, therefore, in conflict with applicable local law, as well as being untenable, on an important question of local law.

3. In this case an employer at the insistence of a labor union conferred and negotiated with said union as to a possible change in wages and working conditions. No results were accomplished and no new agreement was worked out with the union. The employer did not promise to pay the employees an increased wage, nor did it agree to any retroactive wage adjustment. Said employer protested the submission of the matter to the National War Labor Board, and objected to the recommendations of said Board. Despite the so-called wartime no-strike pledge given by organized labor (*i. e.*: the national unions) referred to in the Circuit Court's opinion (R. 114), it does not appear from the record that Amalgamated or the Claimants gave any such pledge to Suburban. There was nothing to prevent claimants from refusing to work unless Suburban promised them a higher wage. (This Court can take judicial notice that during the war and despite said pledge many unionized employees did go on strike.) Nor did claimants or Amalgamated take any steps to preserve any rights or claims for increased wages (R. 87). The fact is that claimants continued working for Suburban as before and on the same terms, accepting without protest the same rate of wages which they had previously received, and which was all that Suburban agreed to pay them. Two courts (the Referee in Bankruptcy who heard the evidence and observed the witnesses) found that such conduct on the part of the parties

did not give rise to a contract or right to recover in *quantum meruit*. The Circuit Court of Appeals in deciding otherwise has opened the door to a large amount of litigation as well as uncertainty and disharmony in situations of this character. Hereafter, if the Circuit Court decision stands, many an employer will hesitate to go into any bargaining conference with his employees or their union, because he might face a *quantum meruit* suit at any time thereafter within the period of the local statute of limitations if the negotiations reach a stalemate as here. The employees could go into the conference room with their "tongues in their cheeks"—wait to see what happens—if the negotiations bring about a result to their liking, then they would be satisfied—if not, then they could sue their employer for *quantum meruit*. This would really be dealing at arms length—a condition that would disrupt peaceful or harmonious relations between labor and management.

4. The Bankruptcy Act in section 24a thereof (11 U. S. C. A. section 24(a)) provides that when any order, decree or judgment involves less than $500.00, an appeal therefrom may be taken only upon allowance of the appellate court. None of the claimants has a claim which by any possibility can exceed $500.00, and yet none of the claimants asked the Circuit Court of Appeals for leave to appeal. While each claim as filed is unliquidated in amount, it is a money claim and asks for back wages. In order for each claimant to appeal as of right, each individual claim would have to amount to at least $500.00. The War Labor Board directive to which the claimants referred in their proofs of claim, provided for an increase of ten cents an hour in wages for a regular 48-hour work week with time and a half for overtime all retroactive to May 24, 1944 (R. 70, 86). Assuming that each claimant worked 48 hours a week during the period of fifty weeks involved in his claim, he would be

entitled at the most on the basis of the Board's award to $4.80 extra per week, thus amounting to $240.00 for a total of fifty weeks. Even if each claimant worked overtime every day (an extreme case), certainly that overtime would not amount to more than $200.00, and probably much less. Thus it appears that each claim involves less than $500.00, and it is submitted that the Circuit Court decided contrary to the federal statute (section 24a of the Bankruptcy Act) when it denied petitioner's motion to dismiss the appeal filed by claimants (R. 113) for their failure to ask said Circuit Court for an allowance of said appeal. If there is any question here as to how much each claim amounts to in money, then this Court, just as the Circuit Court could have done, may ascertain such amount by taking the oath of a party to the cause or by other competent evidence (28 U. S. C. A. section 231). The Circuit Court erred in treating the appeal as a single, consolidated one, and in effect considering all 36 claims as one claim aggregating over $500.00 (R. 113). In the first place there was no order of consolidation entered in this cause under F. R. C. P. 42 (a). Each claim was filed separately and constitutes a separate, individual claim, even though all 36 claims are based on the same set of facts and law. The amount of each claim if and when fixed and determined will necessarily be different, based on the respective kind of work done, time worked, etc. Hearing the claims in one hearing or on one appeal was for convenience and expedition and to save the claimants any added expense, but that did not thereby consolidate or group them in fact into one claim. In any event this was at most a procedural joinder or consolidation, but not one as a matter of substantive law under the statute. The claimants do not consist of one claimant, but 36 different ones, and each claimant must stand or fall on his own proof of claim.

5. It is respectfully submitted that for the legal reasons hereinbefore set forth and to the further covered in the annexed brief, and because of sound and compelling reasons of social policy having to do with an important public question, this petition for a writ of certiorari should be granted.

Dated: August 29, 1946.

ALFRED H. WASSERSTROM,
SIDNEY H. REICH,
Counsel for Petitioner,
Fred J. Martin, Trustee.

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In the Matter
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BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Opinions Below

The opinions below are referred to on page 2 of the petition.

Jurisdiction

The basis for jurisdiction appears at pages 7-8 of the petition.

Statement of the Case

A full and complete statement of the matters involved herein, insofar as your petitioner is concerned, is found on pages 2 to 7 of the petition.

Specification of Errors

1. The Circuit Court of Appeals erred in holding that claimants are entitled to recover for their services on a *quantum meruit* basis.

2. The Circuit Court of Appeals erred in holding that claimants did not have to obtain leave to appeal from said court under section 24(a) of the Bankruptcy Act.

POINT I

Claimants are not entitled to recover on a quantum meruit basis.

Both the Referee in Bankruptcy and the District Court held that there was a contract implied in fact from the conduct of the parties that claimants would continue working at their old wage rate; that Suburban never agreed to pay more.

The negotiations or efforts for adjustment between Suburban and Amalgamated are without legal effect since they resulted in no agreement or settlement being reached. The National War Labor Board hearings were forced upon Suburban who resisted the claims for increased wages. The Board's directive admittedly created no rights enforceable by the claimants or which will support their claims. (See opinion of Circuit Court, R. 114.) Therefore there is nothing in the acts, words or deeds of the parties which created an implied or even quasi contract to pay claimants on a *quantum meruit* basis.

This Court indicated in the case of J. I. Case Co. v. N. L. R. B., 321 U. S. 332, that employees may make their own individual contracts with their employer as to wages and working conditions even though at the same time their union

representative may be negotiating with said employer in an attempt to work out a new collective agreement. Thus it was stated in said case at page 337:

> "Men may continue work after a collective agreement expires and, despite negotiation in good faith, the negotiation may be deadlocked or delayed; in the interim express or implied agreements may be held to govern."

That is exactly what happened in the case at bar. And the express or implied individual agreements so made between Suburban and claimants whereby the latter continued working at the specified and definite wage rates previously worked out, should be held here to govern and encompass all the rights and obligations of the parties; bearing in mind that claimants voluntarily and without protest accepted such wages from Suburban as their working compensation each and every week during the period of almost a year after May 24, 1944, and signed itemized wage receipts for same. Since there was no promise or holding out by Suburban that their wages would be increased or that they would be paid the reasonable value of their services as such, these claimants are estopped from now claiming additional monies from the bankrupt estate. Claimants by their conduct showed an assent to the acceptance of the old wage scale for the period in question as full payment for their services. No *quantum meruit* implied in fact contract arose.

New York Tel. Co. v. Jamestown Tel. Corp., 282 N. Y. 365, 371.

Miller v. Schloss, 218 N. Y. 400, 406, 407.

Chinnery v. Kennosset Realty Corp., 286 N. Y. 167, 173.

In N. Y. Tel. Co. v. Jamestown Tel. Corp. *(supra)*, the N. Y. Court of Appeals stated the following at page 371:

> "Where, after the expiration of a contract fixing the reciprocal rights and obligations of the parties, they continue to do business together, the conduct of the parties may at times permit, or even constrain, a finding that the parties impliedly agree that their rights and obligations in connection with such business should continue to be measured as provided in the old contract."

In Miller v. Schloss *(supra)*, the same Court stated as follows (pages 406-407):

> "A contract cannot be implied in fact where the facts are inconsistent with its existence; or against the declaration of the party to be charged; or where there is an express contract covering the subject-matter involved; or against the intention or understanding of the parties; or where an express promise would be contrary to law. The assent of the person to be charged is necessary and unless he has conducted himself in such a manner that his assent may fairly be inferred he has not contracted. (Morse v. Kenney, 87 Vt. 445; Mathie v. Hancock, 78 Vt. 414; Hertzog v. Hertzog, 29 Pa. St. 465; Earle v. Coburn, 130 Mass. 596; Central Bridge Corporation v. Abbott, 4 Cush. 473.) Under the law and the stated facts it obviously cannot be held as a matter of law that the defendant is liable to the plaintiffs for the sum recovered by reason of his promise or contract implied in fact that he would pay them. In fact, *neither the complaint nor the trial proceeded upon that cause of action.*" (Italics mine.)

That is the situation with Suburban. It did not agree to pay increased wages or any wages different than those set forth in the old contract. It paid the same wages to claimants and they accepted them in full. The claim of *quantum meruit* was an after-thought—a last minute effort by claimants to sustain the recommendation for increased wages of the National War Labor Board, which the Courts have held not enforceable by court action. The proofs of claim of the claimants do not claim any right to *quantum meruit,* or any implied contract, but seem to be based wholly on the National War Labor Board's award.

Mutual assent is essential to the formation of a contract. The minds of the parties must meet on the precise terms of the agreement.

Lally v. Cronin, 247 N. Y. 58, 63.

So also as to contracts implied in fact.

1 Williston, Contracts (Rev. ed., 1936) section 3 (footnote 6).

There was no such assent or agreement in the case at bar as to increased wages or as to paying on a *quantum meruit* basis.

Where a contract of employment for a definite time is made and the employee's services are continued after the expiration of the time, without objection, the inference is that the parties have assented to another contract for a term of the same length with the same salary and conditions of service.

1 Williston, Contracts (rev. ed. 1936) Section 90.
Mason v. N. Y. Produce Exchange, 127 App. Div. 282, aff'd 196 N. Y. 548.
Adams v. Fitzpatrick, 125 N. Y. 124.

Mere talk or negotiations between an employer and an employee in the consideration of a possible increase in remuneration, without any definite arrangement or agreement being made or worked out for an increase in salary for any definite period or any stated amount, does not give rise to any contract or right to recover in *quantum meruit*. Particularly is that true where the employee has in the interim continued working on and accepted payment without protest of the wages given to him by his employer as compensation for his services thus rendered. In such event there is nothing from which a promise could be inferred that what the employee would receive would be based upon a *quantum meruit*, or that he was entitled to receive anything in addition to that already paid him.

Mackintosh v. Kimball, 101 App. Div. 494, 495, 497, 498.

Starbuck v. Fletcher Savings & Trust Co., 91 Ind. App. 695, 170 N. E. 863.

Another New York case in point is Summers v. Phenix Ins. Co., 50 Misc. 181, where an employee signed receipts for his monthly salary in a book kept by his employer which he knew contained an entry to the effect that his compensation was to be at a specified rate per annum (the amount actually paid to him and signed for). The Court held this to be an acknowledgment of what constituted the contract of the parties.

If it be claimed that there was a dispute pending at the time as to what was the wage to be paid claimants, then by accepting wages under the old contract each week and signing itemized receipts therefor, the claimants not only acknowledged that they had received payment in full of their compensation for their services each particular week,

but there was in addition an accord and satisfaction of the debt which would preclude any further claim on the part of claimants.

> "It is the settled law of this State that if a debt or claim be disputed or contingent at the time of payment, the payment when accepted of a part of the whole debt is a good satisfaction, and it matters not that there was no solid foundation for the dispute. The test in such cases is, was the dispute honest or fraudulent? If honest it affords the basis for an accord between the parties, which the law favors, the execution of which is the satisfaction."

Post v. Thomas, 212 N. Y. 264.

In accord:

Simons v. American Legion of Honor, 178 N. Y. 263.

Byrne v. Padden, 248 N. Y. 243

Clark v. Standard Rock Asphalt Corp., 233 App. Div. 536.

Rule 52 of the Federal Rules of Civil Procedure provides in part that findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

U. S. v. Forness, (C. C. A. 2d) 125 F. 2d 928, 943.

Oneida Valley Nat. Bank v. Balish (C. C. A. 2d 1942) 130 F. 2d 255.

Rockmore v. Weiner, (C. C. A. 2d 1943) 131 F. 2d 595.

Under General Order 47 requiring a District Judge to accept a Referee's findings of fact unless clearly erroneous,

and Rules 52(a) and 53(e)(2) of F. R. C. P. requiring the Circuit Court of Appeals not to set aside a District Judge's findings unless clearly erroneous, appellate review by the Circuit Court from the District Court is the same as on a District Court's review of a Referee's order.

Morris Plan Industrial Bank v. Henderson, (C. C. A. 2d 1943) 131 F. 2d 975.

The Circuit Court of Appeals in reversing the District Court in the case at bar did not state that the findings of fact of the Referee in Bankruptcy, adopted and concurred in by the District Court, were clearly erroneous. For that reason alone the Circuit Court should not have reversed the lower courts.

It is respectfully submitted that the Circuit Court of Appeals did not follow the local law as set forth in the decisions of the New York Courts; had it done so, its decision would have been otherwise, and as already shown New York law governs on the question of the contract rights of the parties.

POINT II

The Circuit Court of Appeals should have dismissed the appeal of claimants because of their failure to obtain leave to appeal from said Court.

Section 24(a) of the Bankruptcy Act.

The jurisdiction of the Circuit Court of Appeals on appeals in bankruptcy cases must be determined by the special provisions of the bankruptcy statute (Bankruptcy Act, Sections 24, 25).

Ackert v. Baltimore & O. R. Co., (C. C. A. 4th) 115 F. 2d 455, cert. den. 313 U. S. 717.

An appellant must ask the Circuit Court of Appeals to allow his appeal when the order appealed from involves money less than $500.00 in amount.

In re Winton Shirt Corp., (C. C. A. 3rd) 104 F. 2d 777.
England v. Ducasse, (C. C. A. 9th) 104 F. 2d 760.
Robertson v. Berger, (C. C. A. 2d) 102 F. 2d 530, 531.

It was held by the Circuit Court of Appeals, 2nd Circuit in Hackner v. Guarantee Trust Co. of N. Y., 117 F. 2d 95, that where two or more plaintiffs, each having a separate and distinct demand, join in a single suit, each must be over the $3,000.00 limit, and the claims cannot be aggregated for the purpose of creating jurisdiction.

By analogy at least, this same rule should apply to the appeal filed in the case at bar by the claimants in the Circuit Court of Appeals. They constitute 36 claimants and each filed a separate claim against the bankrupt estate. Therefore, each claim had to amount to $500.00 or more in order to have an appeal as of right in the Circuit Court.

Conclusion

Your petitioner respectfully submits that the final determination by this Court of the conclusions of law involved in this case is of the utmost importance to the rights of employers and employees as well as unions in this country. The decision of the Circuit Court of Appeals is not only contrary to the applicable local law of the State of New York, but is contrary to sound principles of collective bargaining, as well as the freedom of individual employees in making binding agreements with their employers as to the wages to be paid to them in the interim while their

union is negotiating on possible wage adjustments with the employer, which this Court indicated could be done in the case of J. I. Case Co. v. N. L. R. B. *(supra)*. Unless the error in the Circuit Court decision is corrected by this Court the effect will be to create regrettable confusion and litigation in labor-management relations. Employers will hesitate (on the basis of the Circuit Court decision) to confer or negotiate with unions with the possibility of future lawsuits by the employees being brought against the employers to recover on *quantum meruit* if the negotiations stretching over some period of time do not result in any agreement being reached between the union and employer. And this would be the result despite the fact that the employees willingly received the wages under the old collective agreement from their employer for their work in the interim.

In view of the foregoing, we respectfully request that the petition for the writ of certiorari be granted.

Respectfully submitted,

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Fred J. Martin, Trustee.